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Egidio Renna

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EXAMINER

FETSUGA, ROBERT M

ART UNIT

PAPER NUMBER

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,993	Applicant(s) RENNA, EGIDIO	
	Examiner Robert M. Fetsuga	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19-27 is/are pending in the application.
- 4a) Of the above claim(s) 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19,20 and 23-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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1. Claims 21 and 22 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 02, 2008.

2. The drawings are objected to because reference numeral "6" denotes different structure between Figs. 1 and 2, reference numeral "6" denotes different structure between Figs. 2 and 10, reference numeral "6" denotes different structure between Figs. 10 and 12, reference numeral "6" denotes different structure between Figs. 12 and 23, reference numeral "19" (pg. 5 ln. 6) is missing, reference numeral "29" (pg. 6 ln. 1) is missing, reference numeral "61" apparently should be --62-- in Figs. 27 and 28 (pg. 7 ln. 26), reference numerals "58" and "66" (pg. 7 lns. 22 and 30) are missing, reference numeral "86" (pg. 8 ln. 22) is missing, reference numerals "97" and "98" (pg. 9 lns. 4 and 7) are missing, reference numeral "112" apparently should be --114-- in Fig. 66 (pg. 10 ln. 2), reference numeral "38" apparently should be --118-- in Figs. 67, 68, 70 and 71 (pg. 10 ln. 6), and reference numeral "124" (pg. 10 ln. 17) is missing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should

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include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

It is acknowledged that "annotated sheets" were submitted with the response filed April 16, 2009. However, absent the replacement sheets required by Rule 121, no drawing amendment has been effected.

3. The disclosure is objected to because of the following informalities: Page 5, lines 17 and 18, "6" designates different elements; page 5, lines 18 and 29, "6" designates

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different elements; page 5, line 29 and page 6, line 4, "6" designates different elements; page 7, lines 3 and 8, "51" designates different elements; page 7, lines 3 and 10, "52" designates different elements; and page 6, line 4 and page 7, line 11, "6" designates different elements. Appropriate correction is required.

4. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "home bath" and "in a sidewall of" feature set forth in claim 19, and "coupled to" feature set forth in claim 20, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

5. The amendment filed April 16, 2009 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: The paragraph at page 6, line 19, where the plastic apparatus body 37 is described as being "pivotally housed or mounted in a seat or hole formed in the upper lip 44

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of the bath 7 via the intermediate T-shaped supporting element 42."

Applicant is required to cancel the new matter in the reply to this Office Action.

Applicant argues at pages 11-12 of the response original Figs. 18-20 illustrates the noted subject matter. The examiner disagrees. The originally disclosed "seat or hole" is not depicted in the drawing figures as stated in the noted paragraph. Clearly, this is insufficient to support the specific "pivotally housed or mounted" language added by amendment. As a side note, it does not appear the amended paragraph complies with Rule 121 in that the last three lines of the original paragraph have been excluded from the amended version, but no markings are present to indicate such deletion.

6. Claims 19, 20 and 23-27 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 19 recites a seat "integrally formed in a sidewall of said bath body housing". This subject matter is not found in the originally filed disclosure and is therefore considered to

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be new matter. Figs. 18-20 do not illustrate the seat, as aforesaid, and therefore cannot illustrate the "integrally formed" feature.

7. Claims 23 and 27 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 23 recites "said pedaling apparatus is pivotally mounted in said seat provided in said upper lip of the bath body housing by said supporting means." Claim 27 recites similar subject matter. This claimed subject matter is not found in the originally filed disclosure and is therefore considered to be new matter. The claims appear reflective of the subject matter held to be new matter added to the disclosure as discussed supra.

8. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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The claim is unclear as to the relationship between the "upper lip" on line 3 thereof, and the "sidewall" on line 7 of claim 19.

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 19, 20 and 24, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler '447 and Fernie et al.

The Butler '447 (Butler) reference (Figs. 7-10) discloses a bath comprising: a body 20 including a seat (Fig. 7) and a sidewall (Fig. 7); and a pedaling apparatus 300 including supporting means 100. Re claim 24, the choice of supporting means shape would appear an obvious choice to be made.

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Therefore, Butler teaches all claimed elements except for the material of the bath body.

Although the Butler bath body may not be enameled metal or plastic, as claimed, attention is directed to the Fernie et al. (Fernie) reference which discloses an analogous bath body 1 which further is plastic (Fig. 6). Therefore, in consideration of Fernie, it would have been obvious to one of ordinary skill in the bath body art to associate plastic with the Butler bath body in order to utilize a strong, lightweight, moldable material. Furthermore, Fernie additionally teaches that a bath body seat 26 can desirably be "integrally formed" with the bath sidewall (col. 3 lns. 34-39).

Applicant's arguments with respect to claim 19 at pages 13-15 of the response have been considered but are moot in view of the new ground(s) of rejection.

11. Claims 19, 20 and 24, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yacoboski, Galasso et al. and Fernie.

The Yacoboski reference discloses a bath comprising: a body 17 including a seat 12; and an exercise apparatus 10 including supporting means 30,44. Re claim 19, the choice of bath body material would appear an obvious choice to be made. Therefore,

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Yacoboski teaches all claimed elements except for the provision of a pedaling apparatus, and the integral forming of the seat.

Although the exercise apparatus of the Yacoboski bath does not include a pedaling apparatus, as claimed, attention is directed to the Galasso et al. (Galasso) reference which discloses an analogous bath (col. 1 lns. 57-58) which further includes an exercise apparatus having a pedaling apparatus 17. Therefore, in consideration of Galasso, it would have been obvious to one of ordinary skill in the bath art to associate a pedaling apparatus with the Yacoboski exercise apparatus in order to facilitate exercising.

Although the seat of the Yacoboski bath does not include integral forming, as claimed, attention is directed to the Fernie reference which discloses an analogous bath which further includes a seat 26 having integral forming (col. 3 lns. 34-39). Therefore, in consideration of Fernie, it would have been obvious to one of ordinary skill in the bath art to associate integral forming with the Yacoboski seat in order to facilitate manufacture.

12. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

13. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/
Robert M. Fetsuga
Primary Examiner
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